



BEFORE THE STATE BOARD OF EQUALIZATION.

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
MALCOLM BROCK COMPANY }

Appearances:

For Appellant: N. J. Pickle, Secretary of Appellant
Corporation
For Respondent: Chas. J. McColgan, Franchise Tax Commissioner

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of the Appellant to his proposed assessment of an additional tax in the amount of \$95.25, based upon its return for the year ended January 31, 1934.

Three issues are involved in this appeal. The first relate to the disallowance of a deduction for bad debts; the second to the disallowance of a deduction for loss on a building known as the Hopkins Building, and the third to the disallowance of a deduction for additional depreciation computed on the basis of January 1, 1928 values of Appellant's property.

In its return for the year ended January 31, 1934, Appellant deducted from gross income the sum of \$11,146.75 on account of bad debts ascertained to be worthless and charged off during the year. A portion of this deduction, amounting to \$3,288.64, was disallowed by the Commissioner.

One of the debts disallowed was a note in the amount of \$1,150, which, apparently, was not charged off on Appellant's books as a worthless debt until after action on the note was barred by the statute of limitation. With respect to this note, Appellant states that it has always been of the opinion that a note until it had become outlawed by the fact of its being over four years old could be regarded as a collectible asset. We cannot subscribe to this view. In our opinion, circumstances may very well occur which would cause a debt evidenced by a note to be considered uncollectible and worthless long prior to the expiration of the four-year period of limitation.

Very little information has been supplied respecting the other debts disallowed as a deduction. The Commissioner states, however, in his reply to Appellant's opening brief that of the debts disallowed, two were contracted prior to 1924, one prior to 1929, one prior to 1930, and three prior to 1932. He further states that on four of these accounts no payments were ever made, and on the remaining three, credits appear only in the year in which the debts were acquired and not subsequently.

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In its opening brief, Appellant states that as a merchant in business and on the ground, it believes it is better able to determine whether a debt is good or bad than an accountant in the office of the Franchise Tax Commissioner. In its closing brief, it states that regarding the bad debts disallowed other than the note, it can only reiterate its previous contention that the **active** merchant in business for a long period of time in the territory in which he is serving can have a better knowledge of whether a debt is collectible than an accountant who is absolutely unfamiliar with the circumstances under which the debts were contracted, the personality of the **persons** contracting them or the conditions that may have affected the collectibility of the accounts.

These are the only arguments relied upon by Appellant in support of its contention that the Commissioner acted **erroneously** in disallowing a deduction for the debts in question. It may be that Appellant is correct in its belief that it is in a better position to determine whether a debt is collectible than the Commissioner's representatives, but clearly we cannot reverse the Commissioner on any such grounds.

In our opinion, we must sustain the Commissioner in a matter of this character unless it is shown that he acted arbitrarily or unreasonably. In order that we might determine **whether** he did so act, Appellant should have submitted complete information respecting the status of its debtors, the reasons why it believed the debts collectible until the year ended January 31, 1934, and the developments occurring in that year which caused Appellant to charge off the debts as worthless. In the absence of such information, we are unable to accord Appellant **any** relief.

In addition to disallowing certain items of bad debts as a deduction from gross income in computing Appellant's net income for the year ended January 31, 1934, the Commissioner disallowed as a deduction a portion of a loss sustained by Appellant due to the operation of a building known as the **Hopkins** building. This action was taken on the grounds that the portion of the loss disallowed was sustained in a prior year.

Appellant concedes that the portion of the loss disallowed was sustained in a prior year but states that due to general improved conditions it felt justified in hoping that it would be able to take care of the greater portion of the loss without writing it off, and that since it did sustain the loss it believed it was entitled to deduct the same in its return for the year ended January 31, 1934.

The only section of the Act providing for a deduction for loss is Section 8(d). This section clearly contemplates that losses shall be deducted from gross income only for the year in which sustained, unless the Commissioner consents to the accounting for losses as of a different period. Since the portion of the loss disallowed was admittedly not sustained during the year ended January 31, 1934, and since it does not **appear** that we are empowered to order the Commissioner to consent to the accounting for losses as of a period other than the year in which

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sustained, we are unable to disturb the Commissioner's action in disallowing the deduction under consideration.

The third and last question presented for our determination is whether the Commissioner acted properly in disallowing a deduction for additional depreciation computed upon the basis of January 1, 1928 values of Appellant's property.

Prior to 1933, the Act provided that in the case of property acquired prior to January 1, 1928, depreciation could be computed either upon the basis of the cost of the property or upon the basis of the fair market value thereof as of January 1, 1928, whichever was greater. But in 1933, the Act was so amended as to eliminate the provision permitting the computation of depreciation on the basis of January 1, 1928 values. (See Cal, Stats. 1933, Ch. 209).

The Act effecting this amendment expressly provided that it should be applied in the computation of taxes accruing subsequent to December 31, 1932. Inasmuch as the taxes based upon the return for the year ended January 31, 1934, clearly accrued subsequent to December 31, 1932, it follows that Appellant was not entitled in making that return to compute depreciation on the basis of January 1, 1928 values of its property.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the action of Charles J. McColgan, Franchise Tax Commissioner, in overruling the protest of Malcolm Brock Company, a corporation, against a proposed assessment of an additional tax in the amount of \$95.25 based upon its return for the year ended January 31, 1934, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 25th day of October, 1935, by the State Board of Equalization.

R. E. Collins, Chairman
John Corbett, Member
Fred Stewart, Member
Orfa Jean Shontz, Member
Ray L. Riley, Member

ATTEST: Dixwell L. Pierce, Secretary